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September 1, 2009

VIA E-FILING

Charles L.A. Terreni, Esquire
Chief Clerk of the Commission
SC Public Service Commission
P. O. Drawer 11649
Columbia, SC 29211

RE: Review of Avondale Mills, Incorporated's Rates
Approved in Order No. 2009-394
Docket No. 2009-342-WS

Dear Mr. Terreni:

Enclosed please find a **Motion to Dismiss** filed on behalf of Avondale Mills, Incorporated in the above referenced docket. By copy of this letter, I am serving all parties of record.

If you have any questions or if I may provide you with any additional information, please do not hesitate to contact me.

Sincerely,

ELLIOTT & ELLIOTT, P.A.



Scott Elliott

SE/jcl

Enclosures

cc: Parties of record w/enclosures

STATE OF SOUTH CAROLINA
BEFORE THE
PUBLIC SERVICE COMMISSION
DOCKET NO. 2009-342-WS

RE: Review of Avondale Mills,)
 Incorporated's Rates Approved) **MOTION TO DISMISS**
 in Order No. 2009-394)

The Respondent, Avondale Mills, Inc. ("Avondale"), herewith moves pursuant to Rule 12(b)(6) SCRPC for an order of the South Carolina Public Service Commission ("Commission") dismissing the application in the above captioned docket with prejudice on the following grounds.

The Plaintiffs, Senator A. Shane Massey, Representative J. Roland Smith, and Representative Tom Young, Jr. are members of the Aiken County Delegation to the South Carolina General Assembly, but are not customers of Avondale. Consequently they lack standing to request the Commission to alter, amend or rescind Order No. 2009-394. S.C. Code Ann. §58-5-270 (see also S.C. Code Ann. §8-13-785 and S.C. Code Ann. §58-3-142). Therefore their request (or application) should be dismissed with prejudice.

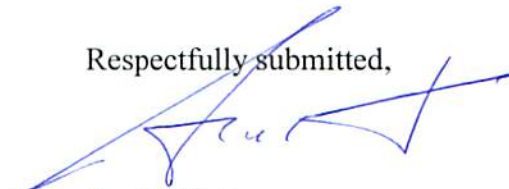
The request (or application) herein fails to allege facts sufficient to state a cause of action and should be dismissed with prejudice. The Commission granted the rates in question by Order No. 2009-394, dated June 18, 2009, in Docket No. 2008-460-WS. No party to Docket No. 2008-460-WS has appealed the Commission's order. Docket No. 2008-460-WS was properly noticed and Avondale's customers and the public were given due notice of their rights to appear and participate in Docket No. 2008-460-WS. No party intervened. The request alleges no facts that

would permit or justify a collateral attack on Commission Order No. 2009-394 issued 75 days ago.

Moreover, the Commission has no authority to open a docket, *sua sponte*, to alter, amend or rescind a final order. Neither the Aiken County Delegation nor the Commission has alleged any facts sufficient to alter, amend or rescind Order No. 2009-394. Nor is the Commission authorized to review its orders at random. A careful reading of the request and the August 12, 2009, Commission directive opening this docket reveals no justification for opening the instant docket. Due process requires not only notice and an opportunity to be heard, but also requires that the Respondent have the opportunity to know the allegations leveled against it. Because the record is devoid of any allegation of fact sufficient to constitute a cause of action the request (or application) in this docket should be dismissed with prejudice.

For the foregoing reasons, Avondale moves that the request (or application) herein be dismissed with prejudice and for such other and further relief as the Commission deems just and proper.

Respectfully submitted,



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Columbia, SC

September 1, 2009

CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that she has served below listed parties with a copy of the pleading to the persons indicated below by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

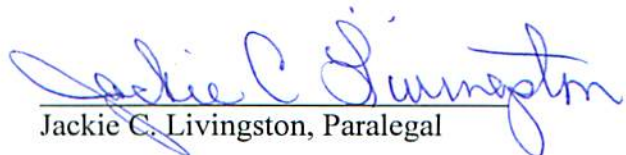
RE: Review of Avondale Mills, Incorporated's Rates
Approved in Order No. 2009-394

DOCKET NO.: 2009-342-WS

PARTIES SERVED:

Jeffrey M. Nelson, Esquire Shealy Boland Reibold, Esquire Office of Regulatory Staff P. O. Box 11263 Columbia, SC 29211	The Honorable J. Roland Smith The Honorable A. Shane Massey The Honorable Tom Young, Jr. Aiken County Legislative Delegation 828 Richland Avenue, West Aiken, SC 29801
A. Shane Massey, Esquire Nance, McCants & Massey P. O. Box 2881 Aiken, SC 29802	Thomas R. Young, Jr., Esquire Whetstone Myers Perkins & Perkins. P. O. Box 651 Aiken, SC 29802
The Honorable Michael Hunt 509 Laurel Drive Graniteville, SC 29829	Joe A. Taylor 105 Laurel Drive Graniteville, SC 29829

PLEADING: MOTION TO DISMISS


Jackie C. Livingston, Paralegal

September 1, 2009